PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Gaidjiergis et al.

Application No.: 10/039,064 Confirmation No.: 3578

Filed: January 4, 2002 Art Unit: 1732

For: Methods And Apparatus For Manufacturing Fiber-Cement Soffits With Air Vents Examiner: P. Butler

SECOND DECLARATION of JOHN T. WHITEHEAD UNDER 37 C.F.R. § 1.132

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, John T. Whitehead, hereby declare and state:

1. I have been a shareholder of PacTool International, Inc. (PacTool) since 1994 and am currently a Vice President and the Director of Research and Development of PacTool. As a shareholder of PacTool, I have been involved with the fiber-cement industry since 1994, and I have been directly aware of the devices and processes disclosed in U.S. Patent Application No. 10/039,064.

2. I have 34 years of experience building and maintaining machines that cut, punch, fold and paste paper products, and I have approximately 14 years of experience designing, building, testing and/or maintaining machines related to cutting and punching cured fiber-cement boards and panels.

3. PacTool International has developed machines and processes for cutting cured and primed fiber-cement boards and panels to produce fiber-cement soffit coated with a primer.

4. The statements in this declaration are in addition to the statements in my first declaration entitled DECLARATION of JOHN T. WHITEHEAD UNDER 37 C.F.R. § 1.132 dated January 28, 2008 ("First Declaration").

5. The present declaration is necessitated by the Examiner's new assertion in the Final Office Action dated April 29, 2008, that the term "cured" contained in the pending claims is not sufficiently described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed subject matter.

6. The present declaration is further necessitated by the Examiner's incorrect finding that the First Declaration was insufficient as referring only to the system and not to individual claims. The First Declaration directly traversed the Examiner's grounds for rejecting claims 19, 25, 38, 42 and 49 in the previous Final Office Action dated July 26, 2007, and the evidence provided in the First Declaration was commensurate with the scope of those rejections. The First Declaration was responsive to the rejections and presented facts to overcome those rejections, and therefore the First Declaration inherently referred to the rejected claims and was commensurate with those claims. Nonetheless, for purposes of clarity, the First Declaration refers to the rejections of claims 19, 25, 38, 42 and 49, and the present declaration refers to the rejections of claim 19, 25, 31, 38, 42 and 49 in the outstanding Final Office Action.

7. Figure 3B and paragraph [0027] of the originally filed application show and described that the punches penetrate to an intermediate depth D_i such that "the fiber-cement panel 14 fractures along approximately conical paths to eject frustoconical plugs 18 from the fiber-cement panel 14." (emphasis added.) The intermediate depth in this embodiment, for example, is "approximately 0.0625-0.1875 inch for a 0.25-0.31625 inch thick panel 14." This corresponds to a penetration depth of 19.76% to 75% of the thickness of the panel. A person skilled in the art would understand that fiber-cement must be cured so that it is dry enough to fracture along a conical path and create frustoconical plugs when the intermediate punch depth D_i is only 19.76% to 75% of the thickness of the panel. Therefore, in addition to my statements in Paragraph 5 of the First Declaration, the originally filed application sufficiently described the invention to reasonably convey to a person of ordinary skill in the art that the inventors had possession of the claimed subject matter at the time the application was filed.

8. Figure 5 and paragraphs [0035] and [0036] of the originally filed application show and describe that, before being punched, fiber-cement panel 14 is placed between rollers of a first active roller assembly 174 that indexes the fiber-cement panel 14 through the punch assembly 40. (emphasis added.) Figure 5, moreover, shows that the fiber-cement panel 14 supports itself (a) between the first passive roller array 170a and the active roller assembly 174 and (b) between the first active roller assembly 174 and the support assembly 60. The fiber-cement panel 14 is even shown as supporting itself in a cantilevered arrangement downstream of the first active roller assembly 174 until the leading edge of the fiber-cement panel is supported by the support assembly 60. A person skilled in the art would accordingly understand the following:

(a) The fiber-cement panel 14 must be sufficiently cured to have a low moisture content and set binder so that the fiber-cement panel can support itself as shown in Figure 5.

(b) An uncured fiber panel, and in particular the mat with hydraulic binder that requires a support tray for punching as taught by Kober, could not support itself as shown in Figure 5 and described in paragraphs [0035] and [0036].

(c) The fiber-cement panel 14 is in a cured state "pre-punching" to support itself through the active rollers 174 and across the punch assembly 40 as shown and described.

Therefore, the originally filed application sufficiently described the invention to reasonably convey to a person of ordinary skill in the art that the inventors had possession of the claimed subject matter at the time the application was filed.

9. I further declare that all statements herein made of my own knowledge are true, and that statements made on information or belief are believed to be true; and further, that the statements are made with the knowledge that the making of willful or false statements or the like is punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of any patent issuing from this patent application.

John T. Whitehead

John T. Whitehead

10/29/08

Date